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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-84502; File No. 4-694]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and NYSE National, Inc.
October 30, 2018.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on September 27, 2018, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and NYSE National, Inc. (“NYSE National”) (collectively, “Participating Organizations” or “parties”). This Agreement amends and restates the agreement entered into between the parties on December 22, 2015, entitled “Agreement Among Financial Industry Regulatory Authority, Inc. and National Stock Exchange, Inc. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

On February 9, 2016, the Commission declared effective the Plan entered into between FINRA and the National Stock Exchange, Inc. (n/k/a NYSE National, Inc.) for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are dual members of FINRA and NYSE National by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every NYSE National rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to NYSE National members that are also members of FINRA and the associated persons therewith.

III. Proposed Amendment to the Plan

On September 27, 2018, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purposes of the Amended Plan are to (1) reflect the name change of National Stock Exchange, Inc. to NYSE National, Inc., (2) update the SRO rules that are covered by the agreement, and (3) to the extent that it becomes a member of NYSE National, allocate regulatory responsibility to FINRA for NYSE National’s affiliated routing broker-dealer, Archipelago Securities. The text of the proposed Amended Plan is as follows (additions are underlined; deletions are [bracketed]):

* * * * *

AGREEMENT BETWEEN
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND
NYSE NATIONAL [STOCK EXCHANGE], INC. PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

¹¹ See Securities Exchange Act Release No. 77089 (February 9, 2016), 81 FR 7871 (February 16, 2016).

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (“FINRA”) and the NYSE National [Stock Exchange], Inc. (“[NSX]NYSE NATIONAL]NYSE National”), is made this [22nd]26th day of September[December], 201[5]8 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and [NSX]NYSE National may be referred to individually as a “party” and together as the “parties.”

This Agreement replaces and restates the agreement entered into between the parties on [June 20, 1977 as amended, entitled “Agreement Between the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange] December 22, 2015 entitled “Agreement between Financial Industry Regulatory Authority, Inc. and National Stock Exchange, Inc. Pursuant to SEC Rule 17d-2 Under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, FINRA and [NSX]NYSE National desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and [NSX]NYSE National desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and [NSX]NYSE National hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “[NSX]NYSE National Rules” or “FINRA Rules” shall mean: (i) the rules of [NSX]NYSE National or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean [NSX]NYSE National Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member’s activity, conduct, or output in relation to such provision or rule; provided, however Common Rules shall not include the application of the SEC, [NSX]NYSE National or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock

Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc., and Investors Exchange LLC, approved by the SEC on August 3, 2016 as the same may be amended from time to time. Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from NYSE National, (ii) incorporation by reference of other NYSE National Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion, including, but not limited to exercise of exemptive authority, by NYSE National, (iv) prior written approval of NYSE National, and (v) payment of fees or fines to NYSE National.

(c) “Dual Members” shall mean those [NSX]NYSE National members that are also members of FINRA and the associated persons therewith.

(d) “Effective Date” shall be the date this Agreement is approved by the Commission.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) “Regulatory Responsibilities” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act

and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, [NSX]NYSE National furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are [NSX]NYSE National Rules are substantially similar to the corresponding FINRA Rules (the “Certification”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of [NSX]NYSE National or FINRA, [NSX]NYSE National shall submit an updated list of Common Rules to FINRA for review which shall add [NSX]NYSE National Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete [NSX]NYSE National Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be [NSX]NYSE National Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and [NSX]NYSE National shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “Retained Responsibilities”) the following:

(a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving [NSX]NYSE National's own marketplace;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any [NSX]NYSE National Rules that are not Common Rules, except for NYSE National rules for any NYSE National affiliate that is a member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as a router for NYSE National and is a member of FINRA ("Router Member") as provided in paragraph 6. As of the date of this Agreement, Archipelago Securities is the only Router Member.

3. Dual Members. Prior to the Effective Date, [NSX]NYSE National shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to [NSX]NYSE National by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide [NSX]NYSE National with ninety (90) days advance written notice in the event FINRA decides to impose any charges to [NSX]NYSE National for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, [NSX]NYSE National shall have the right at the time of the imposition of such charge to

terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Applicability of Certain Laws, Rules, Regulations or Orders.

Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule, order or action is inconsistent with this Agreement, the statute, rule, order or action shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any [NSX]NYSE National Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify [NSX]NYSE National of those apparent violations for such response as [NSX]NYSE National deems appropriate. With respect to apparent violations of any NYSE National Rules by any Router Member, FINRA shall not make referrals to NYSE National pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this agreement.

(b) In the event that [NSX]NYSE National becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, [NSX]NYSE National shall notify FINRA of those

apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on [NSX]NYSE National, [NSX]NYSE National may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to [NSX]NYSE National all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish [NSX]NYSE National any information it obtains about Dual Members which reflects adversely on their financial condition. [NSX]NYSE National shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as

against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep [NSX]NYSE National advised of its actions in this regard for such subsequent proceedings as [NSX]NYSE National may initiate.

9. Customer Complaints. [NSX]NYSE National shall forward to FINRA copies of all customer complaints involving Dual Members received by [NSX]NYSE National relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its

own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by [NSX]NYSE National or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, [NSX]NYSE National and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. Separate Agreement. This Agreement is wholly separate from the following agreements: (1) the multiparty agreement for insider trading activities, which is covered by a separate 17d-2 Agreement by and among Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX,

Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca Inc., and Investors Exchange LLC effective August 3, 2016, as may be amended from time to time and (2) the multiparty 17d-2 agreement relating to Regulation NMS rules by and among Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., BOX Options Exchange LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, The NASDAQ Stock Market LLC, NASDAQ BX, Inc., NASDAQ PHLX, Inc., National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. effective February 2, 2017 as may be amended from time to time.

15. Notification of Members. [NSX]NYSE National and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. Limitation of Liability. Neither FINRA nor [NSX]NYSE National nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the

provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or [NSX]NYSE National and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or [NSX]NYSE National with respect to any of the responsibilities to be performed by each of them hereunder.

18. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and [NSX]NYSE National join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve [NSX]NYSE National of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

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EXHIBIT 1

NOTE: The entire existing table of rules should be deleted and replaced with the table below and for the remainder of the exhibit new text is **italicized** and deleted text is in brackets.

NYSE National [Stock Exchange] (“[NSX]NYSE National”) Rules Certification for 17d-2 Agreement with FINRA

[NSX]NYSE National hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA Rule, NASD Rule, Exchange Act provision or SEC rule identified (“Common Rules”).

#Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from NYSE National, (ii) incorporation by reference to other NYSE National Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion, including but not limited to exercise of exemptive authority, by NYSE National, (iv) prior written approval of NYSE National, and (v) payment of fees or fines to NYSE National.

| <u>NYSE NATIONAL RULE:</u> | <u>FINRA RULE, NASD RULE, EXCHANGE ACT PROVISION OR SEC RULE:</u> |
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| <u>Rule 2.2(e) Obligations of ETP Holders and the Exchange#</u> | <u>FINRA Rule 1250 Continuing Education Requirements</u> |
| <u>Rule 2.2 Obligations of ETP Holders and the Exchange Commentary .05#</u> | <u>FINRA Rule 1010(a), (c) Electronic Filing Requirements for Uniform Forms, and FINRA By-Laws Article V, Sec. 2 and Sec. 3 Registered Representatives and Associated Persons</u> |
| <u>Rule 3.10(b) Notice of Expulsion or Suspension#</u> | <u>FINRA Rule 4530(a)(1)(D) Reporting Requirements¹</u> |

¹ FINRA shall only have Regulatory Responsibilities to the extent NYSE National has adopted or accepts interpretations consistent with FINRA Rule 4530 regarding the specific timing and thresholds for reporting.

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| <u>Rule 6.7410 Definitions(a)-(o)</u> | <u>FINRA Rule 7410 Definitions</u> |
| <u>Rule 6.7420 Applicability</u> | <u>FINRA Rule 7420 Applicability²</u> |
| <u>Rule 6.7430 Synchronization of ETP Holder Business Clocks#</u> | <u>FINRA Rule 4590 Synchronization of member Business Clocks³</u> |
| <u>Rule 6.7440 Recording of Order Information#</u> | <u>FINRA Rule 7440 Recording of Order Information</u> |
| <u>Rule 6.7450 Order Data Transmission Requirements</u> | <u>FINRA Rule 7450 Order Data Transmission Requirements</u> |
| <u>Rule 6.7460 Violation of Order Audit Trail System Rules</u> | <u>FINRA Rule 7460 Violation of Order Audit Trail System Rules</u> |
| <u>Rule 6.7470 Exemption to the Order Recording and Data Transmission Requirements#</u> | <u>FINRA Rule 7470 Exemption to the Order Recording and Data Transmission Requirements.</u> |
| <u>Rule 7.3 (b) and (c) Commissions</u> | <u>FINRA Rule 2232 Customer Confirmations and SEA Rule 10b-10 Confirmation of Transactions</u> |
| <u>Rule 7.34(d)(3) Trading Sessions</u> | <u>FINRA Rule 2265 Extended Hours Trading Risk Disclosure</u> |
| <u>Rule 11.2111 Suitability</u> | <u>FINRA Rule 2111 Suitability</u> |
| <u>Rule 11.2210 Communications with the Public</u> | <u>FINRA Rule 2210 Communications with the Public</u> |
| <u>Rule 11.2232 Customer Confirmations</u> | <u>FINRA Rule 2232 Customer Confirmations and SEA Rule 10b 10 Confirmation of Transactions</u> |
| <u>Rule 11.3.1 Business Conduct of ETP Holders*</u> | <u>FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade*⁴</u> |

² Applies only to NYSE National ETP Holders and their associated persons, as that term is defined in FINRA's By-laws Art. I(rr).

³ FINRA shall not have regulatory responsibilities to the extent NYSE National prescribes additional procedures not required by FINRA

⁴ FINRA shall not have Regulatory Responsibilities regarding .01 of NYSE National Rule 11.3.1.

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| <u>Rule 11.3.2 Violations Prohibited*#</u> | <u>FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and FINRA Rule 3110 Supervision*⁵</u> |
| <u>Rule 11.3.3 Use of Fraudulent Devices*</u> | <u>FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device*</u> |
| <u>Rule 11.3.5(a) Advertising Practices</u> | <u>FINRA Rule 2210(d)(1)(B) Communications with the Public</u> |
| <u>Rule 11.3.5(c) Advertising Practices</u> | <u>FINRA Rule 2210(d)(1) Communications with the Public</u> |
| <u>Rule 11.3.6 Fair Dealing with Customers</u> | <u>FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device, FINRA 2010 Standards of Commercial Honor and Principles of Trade, and FINRA Rule 2111 Suitability⁶</u> |
| <u>Rule 11.3.8(a) The Prompt Receipt and Delivery of Securities</u> | <u>FINRA Rule 11860 COD Orders</u> |
| <u>Rule 11.3.9 Charges for Services Performed</u> | <u>FINRA Rule 2122 Charges for Services Performed</u> |
| <u>Rule 11.3.10 Use of Information</u> | <u>FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity</u> |
| <u>Rule 11.3.11 Publication of Transactions and Quotations#</u> | <u>FINRA Rule 5210 Publication of Transactions and Quotations</u> |
| <u>Rule 11.3.12 Offers at Stated Prices</u> | <u>FINRA Rule 5220 Offers at Stated Prices</u> |
| <u>Rule 11.3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising</u> | <u>FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security⁷</u> |

⁵ FINRA shall only have Regulatory Responsibilities regarding the first phrase of the NYSE National Rule regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the Rule shall remain with NYSE National.

⁶ FINRA shall not have Regulatory Responsibilities regarding .01 of NYSE National Rule 11.3.6.

⁷ FINRA shall not have Regulatory Responsibilities with regard to the prohibitions set forth under subsection (a) of FINRA Rule 5230 to the extent subsections (b)(2) or (b)(3) of the Rule apply.

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| <u>Rule 11.3.15 Disclosure of Control</u> | <u>FINRA Rule 2262 Disclosure of Control Relationship With Issuer</u> |
| <u>Rule 11.3.16 Discretionary Accounts</u> | <u>NASD Rule 2510 Discretionary Accounts⁸</u> |
| <u>Rule 11.3.17 Customer's Securities or Funds</u> | <u>FINRA Rule 2150(a) Customers' Securities or Funds - Improper Use</u> |
| <u>Rule 11.3.18 Prohibition Against Guarantees</u> | <u>FINRA Rule 2150(b) Customers' Securities or Funds - Prohibition Against Guarantees</u> |
| <u>Rule 11.3.19 Sharing in Accounts; Extent Permissible</u> | <u>FINRA Rule 2150(c)(1) Customers' Securities or Funds - Sharing in Accounts; Extent Permissible</u> |
| <u>Rule 11.3.21 Telephone Solicitation</u> | <u>FINRA Rule 3230 Telemarketing</u> |
| <u>Rule 11.3310 Anti-Money Laundering Compliance Program[#]</u> | <u>FINRA Rule 3310 Anti-Money Laundering Compliance Program</u> |
| <u>Rule 11.4.1 Requirements*[#]</u> | <u>FINRA Rule 4511 General Requirements*</u> |
| <u>Rule 11.4.3 Record of Written Complaints</u> | <u>FINRA Rule 4513 Records of Written Customer Complaints</u> |
| <u>Rule 11.5.1 Written Procedures*[#]</u> | <u>FINRA Rule 3110(b) Supervision - Written Procedures*</u> |
| <u>Rule 11.5.2 Responsibility of ETP Holders</u> | <u>FINRA Rule 3110(a) and (b)(7) Supervision*</u> |
| <u>Rule 11.5.3 Records*</u> | <u>FINRA Rule 3110(a) and (b) Supervision*; and FINRA Rule 4511 General Requirements</u> |
| <u>Rule 11.5.4 Review of Activities and Annual Inspections</u> | <u>FINRA Rule 3110(c) and (d) Supervision - Internal Inspections / Review of Transactions and Correspondence*⁹</u> |

⁸ FINRA shall not have Regulatory Responsibilities for the NYSE National rule to the extent the exception in FINRA Rule 2510(d)(2) applies.

⁹ FINRA shall not have Regulatory Responsibilities regarding the NYSE National requirement to annually inspect each office of the ETP Holder (other than as required by the FINRA rule to annually inspect each OSJ and any branch office that supervises one or more non-branch locations).

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| <u>Rule 11.5.7 Annual Certification of Compliance and Supervisory Processes#</u> | <u>FINRA Rule 3130 Annual Certification of Compliance and Supervisory Processes</u> |
| <u>Rule 11.5220 Disruptive Quoting and Trading Activity Prohibited#</u> | <u>FINRA Rule 5210 .03 Disruptive Quoting and Trading Activity Prohibited</u> |
| <u>Rule 11.5320 Prohibition Against Trading Ahead of Customer Orders</u> | <u>FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders</u> |
| <u>Rule 11.12.10 Best Execution</u> | <u>FINRA Rule 5310 Best Execution and Interpositioning¹⁰</u> |
| <u>Rule 11.12.3 Excessive Sales by an ETP Holder</u> | <u>FINRA Rule 6140(c) Other Trading Practices</u> |

¹⁰ FINRA shall not have Regulatory Responsibilities regarding .01 of NYSE National Rule 11.12.10.

[In addition, the following provisions shall be part of this 17d-2 Agreement:]

[Securities Exchange Act of 1934:]

[Section 15(f)]

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC NYSE MKT LLC, and NYSE Arca, Inc. effective August 3, 2016, as may be amended from time to time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-694 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-694. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of FINRA and NYSE National. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-694 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Dual Members that would otherwise be performed by NYSE National and FINRA. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Dual Members. Furthermore, because NYSE National and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, NYSE National and FINRA have allocated regulatory responsibility for those NYSE National rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, NYSE National will review the Certification, at least annually, or more frequently if required by changes in either the rules of NYSE National or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add NYSE National rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete NYSE National rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of

Common Rules continue to be NYSE National rules that qualify as common rules.¹⁴ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, NYSE National will also provide FINRA with a current list of Dual Members and shall update the list no less frequently than once each quarter.¹⁵ The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all NYSE National rules that are substantially similar to the rules of FINRA for Dual Members of NYSE National and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to NYSE National rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add an NYSE National rule to the Certification that is not substantially similar to a FINRA rule; delete an NYSE National rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification an NYSE National rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁶

¹⁴ See paragraph 2 of the Amended Plan.

¹⁵ See paragraph 3 of the Amended Plan.

¹⁶ The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purposes of the amendment are to (1) reflect the name change of National Stock Exchange, Inc. to NYSE National, Inc., (2) update the SRO rules that are covered by the agreement, and (3) to the extent that it becomes a member of NYSE National, allocate regulatory responsibility to FINRA for NYSE National's affiliated routing broker-dealer, Archipelago Securities. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁷ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-694. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-694, between the FINRA and NYSE National, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that NYSE National is relieved of those responsibilities

under the Amended Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Amended Plan.

¹⁷ See supra note 11 (citing to Securities Exchange Act Release No. 77089).

allocated to FINRA under the Amended Plan in File No. 4-694.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman,
Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(34).

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